THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.16079 OF 2006

ORAL ORDER:

The petitioner availed a housing loan from the 1st respondent-Bank under the Employees Housing Loan Scheme. It is not in dispute that the petitioner committed default in payment of the instalments towards the loan account and, consequently, the respondents having invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"), issued notice dated 25.11.2002, under Section 13(2) of the Act, calling upon the petitioner to discharge his liability under the loan account. It is stated that the petitioner made a representation dated 17.12.2002, bringing to the notice of the respondents that his terminal benefits have not yet been paid, and as a matter of fact, W.P.No.23542 of 2002 in which his dismissal from the service is challenged, is still pending, and requesting to drop the proceedings. The respondents by letter dated 16.1.2003, informed the petitioner that his request cannot be accepted. It appears that questioning the same, the petitioner filed an appeal before the Debt Recovery Tribunal, under Section 17 of the Act, but the same was not entertained, in view of the proviso to sub-section 3A of Section 13 of the Act, as inserted by Enforcement of Security Interest and Recovery of Debt Laws (Amendment) Act, 2004.

In this writ petition, the petitioner pleads that though no further proceedings were taken under the provisions of the Act, the staff of the respondent-Bank have been harassing and threatening to dispossess him forcibly from the house in question. They were also proclaiming that the said house would be put to auction. Hence, this writ petition seeking a declaration that the action of the 3rd respondent in issuing notice dated 25.11.2002 under Section 13(2) of the Act is arbitrary and illegal.

Having heard the learned counsel for the petitioner

and Sri Krishnam Raju, learned counsel appearing for the respondent-Bank, I am unable to hold that initiation of the proceedings under Section 13(2) of the Act, as arbitrary and illegal. Admittedly, the petitioner availed the loan from the respondent-Bank and committed default in repayment. If that be so, being a secured creditor, it is open to the respondents to enforce the security interest created in their favour.

However, as rightly contended by the learned counsel for the petitioner, since no possession notice, as required under sub-section (4) of Section 13 of the Act, has yet been issued, the respondents are not justified in interfering with the possession of the petitioner. Under sub-section (4) of Section 13 of the Act, where the borrower fails to discharge his liability within the period specified in sub-section (2) of Section 13 of the Act, the secured creditor has to take recourse to one or more of the measures specified under sub-section (4), to recover the secured debt.

In the circumstances, I deem it appropriate to dispose of the writ petition with a direction to the respondents not to interfere with the possession of the petitioner in respect of the house in question, and not to take any coercive steps against him, without following the procedure prescribed under sub-section (4) of Section 13 of the Act.

The writ petition is accordingly, disposed of. No costs.

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(G. ROHINI, J.)

3rd August, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.16079 OF 2006

3rd August, 2006.

Between:
Moses Ephraim Francis. .. Petitioner.

And

The Senior Branch Manager,
Syndicate Bank, Housing Finance
Branch, Khairatabad, Hyderabad and three
others. .. Respondents.